

NOT FOR PUBLICATION

SEP 13 2006

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

JOSE PEDROZA,

Plaintiff - Appellant,

v.

HARLAN WATKINS, Correctional
Counselor; et al.,

Defendants - Appellees.

No. 05-16207

D.C. No. CV-01-04872-SBA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON and GRABER, Circuit Judges.

California state prisoner Jose Pedroza appeals pro se from the district court's summary judgment in favor of prison officials in his 42 U.S.C. § 1983

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

action alleging violations of the Eighth Amendment and the Americans with Disabilities Act (“ADA”) when defendants first limited his authorization for a medical cane and then revoked the authorization. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Beene v. Terhune*, 380 F.3d 1149, 1150 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on Pedroza’s deliberate indifference claim because he did not present evidence that a cane was medically necessary. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (negligence does not rise to the level of a constitutional violation); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (difference of opinion between prisoner-plaintiff and physician does not amount to deliberate indifference). It is undisputed that Pedroza did not attend follow-up medical appointments that would have determined whether or not a cane was medically necessary.

The district court properly granted summary judgment on Pedroza’s ADA claim because he failed to raise a genuine issue of material fact as to whether he is a qualified individual under the ADA. *See* 42 U.S.C. § 12131; *Duffy v. Riveland*, 98 F.3d 447, 455 (9th Cir. 1996).

The district court did not abuse its discretion in denying Pedroza's request for appointment of counsel because he failed to demonstrate exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

We reject Pedroza's contention that the district court was unfair in granting only a two-week extension of time to oppose defendants' motion for summary judgment.

AFFIRMED.